

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION and
DR. ADAM CORLEY,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DE-
PARTMENT OF LABOR, DEPARTMENT
OF THE TREASURY, OFFICE OF PER-
SONNEL MANAGEMENT, and the CUR-
RENT HEADS OF THOSE AGENCIES IN
THEIR OFFICIAL CAPACITIES,

Defendants.

Case No.: 6:21-cv-00425-JDK

**PLAINTIFFS' UNOPPOSED MOTION
FOR EXPEDITED SUMMARY JUDGMENT BRIEFING**

Plaintiffs Texas Medical Association and Dr. Adam Corley respectfully move the Court to set an expedited schedule for summary judgment briefing so as to permit a decision by March 1, 2022, when the challenged agency action will begin affecting the results of statutorily required arbitration proceedings that determine reimbursement amounts for healthcare services. Defendants have consented to this motion and agreed to the proposed schedule below. A Proposed Order is attached hereto as Exhibit 1.

This action challenges provisions of an interim final rule, entitled “Requirements Related to Surprise Billing; Part II,” 86 Fed. Reg. 55,980 (Oct. 7, 2021), promulgated by defendants (“the Departments”) to implement portions of the federal surprise medical billing law, the No Surprises Act, Pub. L. 116-260 (“NSA”). The NSA, which generally takes effect on January 1, 2022, establishes an independent dispute resolution (“IDR”) process to resolve billing disputes between healthcare providers and payors over the appropriate reimbursement amount for covered out-of-

network services. This action challenges provisions of the rule that require IDR entities, in deciding cases, to “presume” that the so-called “qualifying payment amount” (“QPA”) “is an appropriate payment amount.” 86 Fed. Reg. at 55,995. In particular, the action raises two straightforward questions of law under the Administrative Procedure Act (“APA”):

- Does the NSA require IDR entities to employ a “rebuttable presumption” in favor of the offer closest to the QPA?
- Did the Departments have “good cause” for promulgating the challenged provisions without providing notice and comment as required by the APA?

IDR entities will begin hearing cases in March 2022, *see* Compl. ¶¶ 33–37, and the Departments’ “rebuttable presumption” will thus begin affecting IDR entities’ consideration of cases and their decisions at that time, *see* Compl. ¶¶ 66–74. Accordingly, to allow the Court sufficient time to consider plaintiffs’ challenge and render a decision before IDR proceedings begin in March 2022, plaintiffs propose the following expedited schedule for summary judgment briefing:

- Plaintiffs’ motion for summary judgment – December 10, 2021¹
- Defendants’ opposition/cross-motion for summary judgment – January 18, 2022
- Plaintiffs’ opposition/reply brief – February 1, 2022
- Defendants’ reply brief – February 15, 2022

¹ Plaintiffs expect the government should be able to file the administrative record with the Court before December 10. But if that is not possible, given the need for a decision by March 2022, plaintiffs believe they can support their motion based on the preamble to the rule published in the Federal Register, and are willing to file on that basis, with the understanding that the government would file the administrative record as soon as reasonably practicable thereafter. Further, if the motion is granted, plaintiffs agree to waive the government’s response to the complaint.

CONCLUSION

For the reasons stated, plaintiffs respectfully request that the Court enter the proposed schedule for summary judgment briefing so as to permit a decision by March 1, 2022.

Dated: November 22, 2021

Respectfully submitted,

/s/ Penny P. Reid

Penny P. Reid – Lead Attorney
Texas Bar No. 15402570
preid@sidley.com
SIDLEY AUSTIN LLP
2021 McKinney Ave., Suite 2000
Dallas, Texas 75201
Tel: (214) 981-3413
Fax: (214) 981-3400

Eric D. McArthur (*pro hac vice*)
emcarthur@sidley.com
Derek A. Webb (*pro hac vice*)
dwebb@sidley.com
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8018
Fax: (202) 736-8711

Jaime L.M. Jones (*pro hac vice*)
jaime.jones@sidley.com
Joseph R. LoCascio (*pro hac vice*)
joseph.locascio@sidley.com
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
Tel: (312) 853-0751
Fax: (312) 853-7036

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

The undersigned certifies that on November 16, 2021, counsel for Texas Medical Association and Dr. Adam Corley met and conferred with counsel for the United States Department of Health and Human Services, Department of Labor, Department of the Treasury, Office of Personnel Management, and the current heads of those agencies in their official capacities, which all agree to the requested entry of the proposed schedule for expedited summary judgment briefing.

/s/ Penny P. Reid
Penny P. Reid

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). This document was also served on all counsel via e-mail service, on this 22nd day of November, 2021.

/s/ Penny P. Reid
Penny P. Reid